

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

PENNY DIEHL,

Plaintiff,

V.

MENARD, INC.,

Defendant.

Case No.: 2:20-cv-00293

NOTICE OF REMOVAL

COMES NOW Counsel, Renee J. Mortimer of Lewis Brisbois Bisgaard & Smith LLP, on behalf of Defendant, MENARD, INC., and hereby files this Notice of Removal pursuant to 28 U.S.C.S. §1446, and invokes this Court's jurisdiction under the provisions of 28 U.S.C.S. §1332 and 28 U.S.C.S. §1441(b). In support of said removal, the Defendant states as follows:

1. On or about July 28, 2020, the Plaintiff filed her Complaint in the Lake Circuit Court in Lake County, Indiana. Plaintiff alleges in the Complaint that on August 19, 2018, Plaintiff was a business invitee on Defendant's premises in Merrillville, Indiana and sustained personal injuries as a result of a claimed trip and fall on the forks of a pallet jack. *See, Group Exhibit A*, Plaintiff's Complaint, ¶¶ 1-6. The Plaintiff's alleged cause of action described in those papers sounds in negligence, and it was brought with style and caption as *Penny Diehl v. Menard, Inc.* and is assigned Case No. 45C01-2007-CT-000764 (the "State Court Action"). *See Generally, Group Exhibit A.*

2. On August 3, 2020, MENARD, INC., was served with a copy of the Summons and Plaintiff's Complaint. *See Generally, Group Exhibit A.*

3. 28 U.S.C.S. §1446(b) provides that a notice of removal may be filed within thirty (30) days after receipt by the Defendants of the initial pleading. The lawsuit was commenced on July 28, 2020 and served upon Defendant on August 3, 2020. As such, Defendants' Notice of Removal is timely filed under 28 U.S.C.S. §1446(b), as the time by which removal must be effectuated is September 2, 2020, and this Notice of Removal has been filed in advance of that date.

4. At all times relevant to the Plaintiff's Complaint, Penny Diehl, upon information and belief, was a citizen of Jasper County, State of Indiana.

5. Under 28 U.S.C.S. §1332(c), a corporation is deemed a "citizen" for §1332 purposes only where it is incorporated and where its principal place of business is located. *Hertz Corp. vs. Friend*, 559 U.S. 77, 80 (2010).

6. At all times relevant to the Plaintiff's Complaint, the place of incorporation and principal place of business of MENARD, INC., was Eau Claire, Wisconsin. Thus, MENARD, INC. is a citizen of the State of Wisconsin.

7. Plaintiff claims that she sustained personal injuries which are permanent in nature; required medical treatment and will in the future; has incurred medical bills and expenses for treatment, and will in the future; needed surgery; has endured physical and emotional pain and suffering and will in the future; has lost time and will in the future; has needed medications and will in the future and has sustained other compensable damages under Indiana law. *See, Group Exhibit A*, Plaintiff's Complaint, ¶ 7. Plaintiff's counsel has advised that Plaintiff has had surgical intervention for the injuries she claims are related to the accident.

8. Thus, the amount in controversy meets the federal requirement for removal. *See, Copak vs. State Farm Mut. Auto. Ins. Co.*, 2013 WL 450198 (N.D. Ind. 2013) (holding that

where the amount in controversy is plausible based on the pleadings and the evidence, removal is proper).

9. Because the jurisdictional minimum is satisfied and the parties are of diverse citizenship, the Court has jurisdiction over this matter under 28 U.S.C.S. §1332.

10. Pursuant to 28 U.S.C.S. §1446(d), the Defendant has given written notice of this removal to all parties in the State Court Action, and has filed a copy of this Notice of Removal with the clerk of the Lake County Circuit Court.

11. Pursuant to 28 U.S.C.S. §1446(a), the Defendant attaches to this Notice of Removal a copy of all pleadings, papers, and other orders served upon them in the State Court Action to date. *See, Group Exhibit A.*

WHEREFORE, the Defendant prays this Notice be granted and that said action be removed in its entirety from the Circuit Court of Lake County, State of Indiana, to the United States District Court, Northern District of Indiana, as provided by law.

Respectfully submitted,

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